(1)

Supreme Court, U.S.
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90-532

CASE NO. _

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

IRA BANKS
Petitioner,

v.

STERLING MERCHANDISE, INC.,

AND

SHAW,S JEWELERS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITIONER BRIEF FOR WRIT OF CERTIORARI

IRA BANKS
6507 North 84th Street
Milwaukee, Wisconsin 53224
(414)353-8476

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I

QUESTION PRESENTED

1. Whether The Seventh Circuit Properly Determined In This Case Race Discrimination Claims Without Prejudice Due To Prerequisite Skills Performance Translated Language For Methods Of Calculating Compensation Under Title VII 42 U.S.C. 2000e 2-3 And 42 U.S.C. 1981.

2. Whether One,s Right,s Are Violated By Person Makeing Accusation the item was Placed in One,s Possession The Owner Languish Normal Mediate Data The Materal Allegation Is Is Necessary To a claim The Item Embody,s The Person Require The Same Item Return To The Rightful Person.

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LIST OF PARTIES

The parties to the proceeding below were the Petitioner, Ira Banks, and the respondent Sterling Merchandise, Inc., and Shaws Jewelers sudsidary of Ratner US holding Corp.

Sterling Merchandise, Inc., has Nine Hundred and Seventh Two (972) sub-title jewelry stores throughout the United States East, West,North , and South. Sud title Shaws ,J.B.Robertson, Osterman, LeRoys, Hudson Goodman, Sterling jewelers.

Ratner PLC, an English corpration, shares of which are publicly traded on the london Stock Exchange.

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The petitioner; Ira Banks request that a writ of certiorari to review the judgement and openion

of the United States Court of Appeals for the Seventh Circuit entered in the above entitled proceeding on May 30, 1990 and denied rehearing on June 27, 1990.

OPINIONS BELOW

None of the opinions of the district court or the court of appeals for the seventh circuit are published.They are included for the Court,s review in petotioner,s appendix.

The District Court for the Eastern District of Wisconsine judgement in case No. 87-C-0802 petitioner(appendix 1),openions (petitioner Appendix 2-5), the petioner motion for a new trial denied (petitioner appendix 6-9). The United States Court of Appeals for the Seventh Circuit dismiss order case No. 89-2040 (petitioner appendix 22-28) The United States Court of Appeals for the Seventh Circuit denied order petition for rehearing case No. 89-2040 (petitioner appendix 29) .

The District Court for the Eastern District of Wisconsin on January 4,1989 The Court held its

Final pretrial as part of the record, stipulation precious stones , semi-precious stones , watches and rings "language" was before the court at trial.

The District Court For The Eastern District held trail on January 23, 1989 on petitioner complaint an there(3) race discrimination charges. The issues is repair shop supervisor promotion denied, condition and privileges of employment compensation denied, petitioner was the subject of retaliation, racial employment harrasment, deformation - of- charter, racial slurs, profit shareing withheld, innuendoes, and discharged on December 15,1986 for file two previous race discrimination charges with Equal Rights Division and E.E.O.C. (petitioner appendix 71-86). In violation of 42 U.S.C 1337,1343, 42 U.S.C 2000e-5 (f)(1)(2)(3) and U.S.C 1981 .

On January 24, 1989 , the Court entered judgement for the respondent the case was closed. The court On April 26 , 1989 denied petitioner motion for a new trial. (petitioner appendix 6-9) .

BASIS FOR INVOKING JURISDICTION

Invoking Federal jurisdiction under 42 U.S.C 1337, 1343, 42 U.S.C 2000e-5 (f)(1)(2)(3) and U.S.C section 1981.The petitioner brought suit aganist his former employer, Sterling Merchandise inc., and Shaws Jewelers . On January 23-24 1989. The District granted defendant motion to dismiss this case on all claims.

Petitioner file a motion for a amendment of judgement to trial on January 23-24 1989 (record 79) Pursuant to federal rule 59 (a)(b)(d) &(e) Civil procedure. federal rule evidence 106. Statue above stated authorized by title VII of the 1964 Civil Right Act as amended . Bill Of Rights Of The Constitution : The 1st amendment and Ninth amendment. Whereas, petitioner subpoened Mr. Arthur Anderson to testify at trial on January 23, 1989, he fail to appear at trial. The Court omitted its finding in its judgement normal mediate data language of precious an semi-precious stones thus, applied that language to defendant business based on value of

each sale, the responsibility to each sale, therefore omitted facts of pay based on equal worth as employees of respondent. Petitioner made a second request to call his master gemologist appraiser witness to testify in this case. The Eastern District Court order denying petitioner motion petitioner appendix 6-9.

Petitinoer appealed the District Court,s decision to the Seventh Circuit. After preliminary examination of the parties briefs , the Seventh Circuit notified the parties that it had tentatively concluded that oral argument would not be helpful to the court in this case. The notice provided that any party might file a statement as to need of Orai Argument See Fed R. C. Procedure 34(a); Circuit Rule 34(f). Petitionerfiled such a statement. The request for oral argument was denied. The Seventh Circuit order case No. 89-2040 address petitioner complaint (record 1) and therr (3) discrimination charges in this manner. Shaws Jewelers, Through its regional supervisor Greg Winokur, found Banks, work often to be sloppy and

Untimely. The biggest complaint aganist Banks was that he frequently failed to call a retail store if he knew repair work would not be done by date on which it was promised to the customer. Banks was fired December 15, 1986. The reason stated for his termination was that Banks was "Unable to perform job responsibilities and duties to the satisfaction of Sterling Inc."

To prevail in this court, Banks must demonstrate to the Court that at trial hedid indeed present facts which would entitle him to recovery. Or that he did not have a fair opportunity to present his case, Banks cannot make such a demonstration because has failed to order a transcript of the trial, as was his duty. Fed.R. App. P. 10(b). The only portion of the trialfor which we have a transcript is Banks closeing argument."it is obvious that an appellate court has no alternative but to dismiss an appeal is the absence of the transcript precludes meaningful review"."Because Banks has not presented a record from which we can evaluate his claim of error,

The appeal is dismissed, Fed. R. App. P. 3 (a).

Banks has devoted agreat portion of his argument to a discussion of the grading of precious and semi-precious stones and metal. His argument appears to be that he should not have been punished for deficiencies in his work caused by retail employees misidentification of jewelry. The argument misses the point- even if retail clerks were not trained injewelry grading, Banks was required to prove that he was wrongly punished because of his race. Proof that Banks was treated arbitrarily and unfairly does not constitute proof of discrimina - tion. Banks has not even alleged that other repair shop managers were treated better than he. Absent some such proof, Banks could not prevail . Petitioner Appendix 22-28.

Petitioner sought rehearing from the Seventh Circuit which all judges on the panel voted to deny on June 27, 1990. Petitioner appendix 29.

The jurisdiction of this court,s to review the judgemtnt of the Seventh Circuit is invoked under the laws of The United States, 15 U.S.C 1125, Title VII of the 1964 Civil Rights Act as amended 42 U.S.C 1337, 1343, U.S.C 2000e-5 (f)(1)(2)(3) 42 U.S.C 1981. Amendments to The Constitution Bill Of Rights. United States Constitution First Amendment. United States Constitution Ninth Amendment.

STATUTES AND RULES INVOLVED

Tha relevant statutes and rules involved are as follows:

THE BILL OF RIGHTS

STATUE: Article 1
AMENDMENT TO THE CONSTITUTION
Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press ; or the right of the people peaceably to the to assemble and to petition the government for redress of grievance.

THE NINTH AMENDMENT:
The enumeration in the constitution of certain rights shall not be construed to deny or deparage other by the people.

WISCONSIN STATUE

CHAPTER 942

CRIME-AGANIST REPUTATION AND CIVIL LIBERTIES

942.01 Deformation. (1) Whoever with intent to defame communicates any defamatory to a third person without the consint on the person isguilty of A misdemeanor.

(2)Defamatory matter is anything which exposes the other to hatred,contempt, ridicule,degradation or disgrace in socity or injury in his business or occupation.

(3) This section does not apply if the deformatory matter was true and was communicated with good motives and for justifiable ends or the communication was otherwise privileged.

(4) No person shall be convicated on the basis of an oral communication of defamatory matter except upon the testimony of 2 other person that heard

and understood the oral statement as deformatory or upon a plea of gulity or no contest.

WISCONSIN STATUE

CHAPTER 134

MISCELLANEOUS TRADE REGULATION

134.01 Injury to business;restrant of will. any 2 or more persons who shall combine, associate, agree, mutually undertake or concert to - gether for the purpose of wilfully or maliciously injuring another in his reputation, trade, business or profession by any means whatever,or for the purpose of maliciously compelling another to do or perform any act aganist his will, or preventing or hinding another from doing or performing any lawful act shall be punished byimprisonment in the county jail for not more than one year or by fine not to exceeding $500.

WISCONSIN STATUE

CHAPTER 134

MISCELLANEOUS TRADE REGULATION

134.02 Blacklisting and coercion of coercion of employes. (1) Any 2 or more persons whether members of a partnership or company or stockholders in a corporation, who are employers of labor, who shall combine or agree to combine for the purpose of preventing any person seeking employment from obtaining the same , or for the purpose of procuring or causing the discharge of any employe by threats, promises,circulating blacklists or causing the same to be circulated,or who shall, after haveing dischargeed any employe,prevent or attempt to prevent such employe from obtaining employment with any other person, partnership, company

or corporation by the means aforesaid ,or shall authorize ,permit or allow any of his or their agents to blacklist any dischargeed employe or any employe who has voluntarily left the service of his employer, or circulate a blacklist of such employe to prevent his obtaining employment under any other employer, or who shall coerce or compel any person to enter into an agreement not to unite with or become a member of any labor organization as a condition of his securing employment or continuing therein, shall be punished by fine of not more than $500 nor less than $100, which fine shall be paid into the state treasury for the benefit of the school fund.

TITLE 15-COMMERCE AND TRADE

15 U.S.C:

1125. False designations of origin and false descriptions forbidden.

(a) Civil Action

Any person who, on or in connection with any goods or service, or any container for goods, uses in commerce any word. term, name, symbol, or device, or any combination thereof, or false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which-

(1) is likely to cause confusion, or cause mistake, or to deceive as to the affilliation connection or association of such person with another person, or as to the

1125:
orgin, sponsorship, or approval of his or her goods, services or commercial activities by another person , or

(2) in commercial advertising or promotion misrepresents the nature, characteristics, qualities, or geographic origin of his or her another person,s goods, services , or commercial activities.

Shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

FEDERAL TRADE COMMISSION 16 CFR PART 23
TITLE 16- COMMERCIAL PRACTICES

23.32 Misrepresentation of weight

"Totle Weight".

(a) It is unfair trade practice to misrepresent the weight of any diamond purchasers as to the weight

of any diamond.

note: The standard units for designation of the weight of a diamond is the carat, which it equivalent to two hurdred miligrams (1/5 gram). while advertisments may state the range of products, all weight representations reguarding individual products shall be subject to a 1/200th of a carat (one-half "point") tolerance.

(b) It is unfair trade practice to state or otherwise represent the weight of all diamonds contained in a ring or other article of jewelry unless such weight figure is accompained with equal conspiculty by words of similar import, so as to indicate clearly that the weight shown is that of all stones in the

article and not that of the center or larger stone.

The general considerations outlined above will authorize this court in respect of petitions for writ of certiorari to review judgement of the United States Court Of Appeals For The Federal Circuit , and of any other court whoes judgements are reviewable by law on writ of certitorari.

STATEMENT OF THE CASE

SterlingMerchandise Inc., And Shaws Jewelers is engaged in the busibess of selling jewelry at retail throughout the United States with several facilities performing in repairs in support of retail jewelry salling.

Petitioner Ira R. Banks was hired by Respondent as a goldsmith . On Aprial 28, 1980. The petitioner filed Three(3) race discrimination Charges aganist respondent with bith the Equral Rights division and E.E.O.C. The dates are

March 12 1986, June 16, 1986 and Dec. 17,1986 . The first charge was filed bacaused petitioner was discriminated against by respondent with its pay syatem , the second charge of discrimination was filed because petitioner was harrased ad denied the pomotion of repair supervisor. The Third charge of discrimination was filed whereas he was the recipient of racial slurs , falsely accuased of wrong doing an termanited by respondent Dec.15,1986. After receiving Three Rught To Sue letters from EEOC on the Three separate charges, petitioner brought suit aginst his former employer in the Eastern District Court Of Wisconsin raising all three charges. Together with a complaint which included but not limited tolost wages, promotions benefits, personal embarrassement deformation-of charter, innuendoes ,social status, despair, greatmental pain and suffering petitioner appendix 71-86,(record 1).Asking job reinstatement, damages)compensatory) in the amount of $39,000,plus Quota compensation , vested profit sharing in the amount of $8,771.18

Whereas, the ending balance in petitioner profit shareing as of July 31, ,1987 is $9,719.91 an it remains in respondent possession.(appendix of the petitioner 91-92),petitioner punitive danages in the amount of $34,000,000,00.

On Dec.26,1987,petitioner served respondent his first request for production of document F.R.C.P 34. Respondent objected thus file a motion for protective order (record 10) in the Eastern District court.The Court protected crucial documents from discovery in this case 87-C-0802.Those doccment in part are :personnel files of respondent employees,Retail sale cost codes. wholesale and retail jewelry and repair prist list.Net sales-gross-profit -mark down report for retail and repair shops nation wide,Invoices charged to each store by vendors, paid or unpaid .See petitioner appendix 13-21.Whereas Eastern district Court order (petitoner appendix 10-12) prohibited petitioner from additional deposition June 1, 1987. respond - ent discovery an deposition ended January 1987.

On january 4,1989 the Eastern District held a final pretrial conference ,The Court stipulated respondent business language precious an semi precious stones , precious and semi precious metal would be before the court at trial as the Court viewed a repair No.17810 (petitioner appeidix 104) an concluded it was fraud . Prohibited by the above Federal statue 15 U.S.C 1125 and 23.32. normal mediate data language in respondent business nation wide. It involve every jewelry industry nation wide.

On January 23,1989 Eastern District Court trial begin in this case '7-C-0802.The person represented respondent as cooprate spokeman an terminated petitioner was greg Winokur. As a result of Mr. Winokur leaving the court trial his deposition was denied (record 36) The Court closed this case premature.

On January 30, 1989, petitioner file a motion for a new trial ,call the Court attetion to the respondent business language,pay system , a witness was subpoena did not testify (petitioner Appendix 118),and it was a violation of petitioner wrights

BEST AVAILA

under the BILL OF RIGHTS 1st and ninth amendment. Eastern District Court denied petitioner motion fot a new trial.See order petitioner appendix 6-9.

The Eastern District summarized it openion in this TitleVII and 1981 claim ,petitioner would have to prove that Shaw,s denyed him promotion was because of race. Racial harrassement and racial slurs will not in and of themselves support claim of racial harrassement , The court openion of the petition Title VII and 1981 retaliation is not quite clear. See petitionet appendix 1-5. The petitioner filed a appeal to the Seventh Circuit.

The Seventh Circuit openion is petitioner can not prevail because he has failed to order a trans cript of the trial, petitioner only ordered a tanscript of of the trial closeing arguments, thus, dismissed this case 89-2040. petitioner file a petition for rehearing but was denied. The Seventh Circuit judgement is, petitioner was not involved in sales, and had no right to expect to be tereated like members of the sales force.He devoted a great

BLE COPY

portion of his argument to precious and semi-precious stones and metal.The argument misses the point--even if retail clerks were not trained in jewelry grading,petitioner was required to prove that he was wrongly punished brcause of his race. Petitioner has not even alleged that other repair shop managers were treated better than he. absent some proof petitioner can not prevail petitioner appendix 22-29.

SUMMARY OF ARGUMENT

The Supreme Court should grant Petitioner,s petition for writ of Certiorari asit is claer petitioner was not given a fair to review an testify as anticipate on all fact in this case he was denied two acute witness for petitioner was denyed to testify at trial,Title VII and 1981 statutes,Bill OF RIGHTS 1st and 9th amendment, Wisconsin statu 942.01,134.01 ,134.02 ,15 U.S.C 1125, federal trade 23.32 warrants a review.The jewelry industry and the public is affected by the questions involved impact on every one who

buy jewelry in a jewelry store,manufactures, distributors and any retailer jeweler throughout the nation.Final judgement on material alligations on any an all petitioner race discrimination charges was no rendered by the Eastern District Court An Seventh Circuit.

In referance to appendix 3 no.2, Eastern district Court found respondent made racial slurs an harrased petitioner, and he was terminated by the respondent, Violation of Title VII 42 U.S.C 2000e 3 and 1981. The Seventh Circuit Found Mr. Greg Winokur found petitioner work to be sloppy and untimely, not done on by due date,Terminated because "Unable to perform job responsibility and duties to the satisfaction of Sterling Merchandise Inc., in Response,respondent was not saleing "date" an respondent referances is a violation of Wisconsin crime stateu 942.01. above statue 15 U.S.C 1125, 23.32, Petition Appendix 50 (23.1,23.2-3,23.18).

The United States District Court For The Southern District Of New York Case No.90 Civ. 1476 has before it similar fraud charges by Jewelers Viglance Committee, Inc. v. Vital inc. and Michal Schutze

Under the laws 15 U.S.C 1125. The JVC,S in this case has the responsibility of protecting public confidence in the jewelry industry .

The first amendment give petitioner the right to petition the government. The Courts said that right is guaranteed . Constitutional law states respondent is libel for deformation. Petitioner charged respondent with deformation of character (record 1 appendix 78) , respondent is libel for documents on record in this case 87-C-0802 .See petitioner appendix additional that hold the respondent libel. Appendix 93, 94,95, 96,97, 98, 99, 100, 105 an 106.

The Court held that determination of malice in deformation suits is subjected to full and thorough review on appeal. Base called for appellate courts to exercise independent judgement and to make their own determination as to whether actual malice had been established with convincing clarity. See The petitioner appendix 32-35. The Courts below ignored petitioner deformation with malice charge aganist respondent in this case.

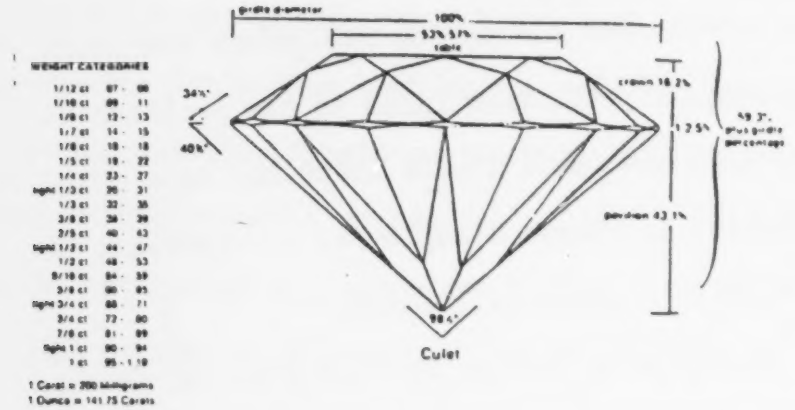
RESAON FOR GRANTING THE WRIT

1. PETITIONER,S PETITION FOR WRIT OF CERTIORARI ON HIS RACE DISCRIMINATION CHARGES WAGES, PROMOTION DENIED, RETALIATION DISCHARGED.

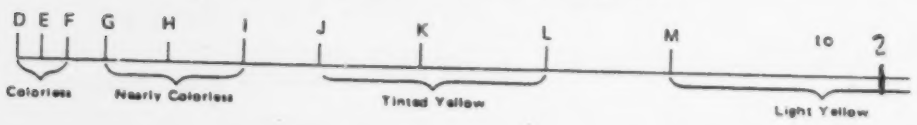
As stated in the list of parties, Sterling Merchandise and Shaw,s Jewelers operated a chain of jewelry stores under a varity of sub-title names through out this Country. Respondent business engagement system for selling jewelry items of precious an semi-precious stones ,precious and semi-precious metal. Each individual stone has its own specific identity size an shape, the value is based on the specifices of the stone, for this Court to grasp respondent retail caucasion managers and repair shop caucasion managers job description ,and pay system, but they had nun skills as required by the respondent an above jewelery trade laws.Petitioner appendix 87-90, peitioner skill 110-113.Petitioner pay was not the same as caucasion,it was Shop production,profibility,amount of stores handled and level of expertise. (Record 36 page 20).Appendix 114-117 document caucasion managers was paid more. but less production, profibility. The Seventh Circuit ,"even if retail clerkswere not trained in jewelry grading,Banks was required to prove he was wrongly

Because of his race.Petitioner appemdix 28.

IDEAL BRILLIANT-CUT PROPORTIONS



COLOR-GRADING NOMENCLATURE



CLARITY-GRADING NOMENCLATURE

The above ddiagram will futher explain the importants of respondent employees of knowing the cut, color clarity and carate weight. Above statue 15 U.S.C. 1125 , title 16. 23.32. any misrepresetation is fraud.Petetion Appendix 93-100 are fraudlant statement aganist petitioner. As stated Above page 19, Fraud was before the Eastern

District Court.The idenity of jewelry items was before the lower Court.pay (wages) promotion denial an retaliation discharged was before the Court of appeals.As petitioner filed in his petition to rehear . Wisconsin 134.01 statu law is a crime to wrongful discharge a employee. In violation of wisconsin statues 111.31-111.

The Seventh Circuit consideration of petition Title VII Claims It has not applied the same standards to its reslution of the Title VII issues as followed by all other courts boths state and Federal as demonstrated by this Case Griggs v. Duke Power Company 401 U.S 424, 429-430 (1971) and Mc.Donnell Douglas, 411 U.S 792, cited bySeventh Circuit Of Appeals.

The Supreme Court grant writ to settle question which are important to the public. Whereas in this case the normal mediate date in respondent business engagement was not address by either District Court or The Seventh Circuit whereas petitioner claims is material allegation . See the above

diagram and Federal trade commission guides for the jewelry industry 16 CFR part 23 Petitioner appendix 47-66 and 101.Whereas, The Sevent Circuit disagree with petitioner that he was selling jewelry as the Seventh Circuit position is U.S. Department of labor wage a nd hour rule 779.241 do not apply to petitioner in respondent business engagement .See petitioner appendix 27, 67-69. In the Eastern District Court For dThe Eastern District of Wisconsin Exhibit 115,petitioner appendix 107 was offered at trial but denied in the court possession is both the envelop and the ring item it self.This envelop an ring document respondent practices is in violation of 15.U.S.C 1125 .

PETITIONER SEEKS JUDGEMENT OF HIS DEFORMATION OF CHARACTER, INNUENDOS IS A QUESTION LAW AN PARTICULAR FACT IS PROPER FOR A GRANT OF CERTIORARI.

2. Petitioner stated before ,the person who fired petitioner was at trial as respondent cooprate spoke person his deposition was taken but denied at trial as evidence. during trial Mr. Winokur left

he left during to avoid fraud and perjury whereas, he personaly wrote these documents petitioner appendix 93-100. respondent is therefore liable under the above laws.to deny petitioner a petition for writ of certiorari , therefore denied petitioner due process of law. The supreme found in this case Herbert v. Lando, 441 U.S 153,99 S Ct. 1655, 60 1.Ed. 2d 115 . The first amendment does not restrict the source from which a plaintiff can obtain evidence."it is essential to proving liability that plaintiff focus on the conduct and state of mind of the defendant. Petitioner Appendix 35. and see Civil Rights Act of 1866 and 1964 discovery sanction 108.8175- 108.8151 . As petitioner some documents was protected from pretective order record 14 an 21. Whereas defendant race discrimination practices have had a disparate impact on minorit group member ,See petitioner appendix 120 -121.

CONCLUSION

The petition is asking This court to resolve all the issues the Sevent Circuit dismissed in

patitioner title VII complaint ,as it is a point of law , important to the public and the jewelry industry. The Sevent Circuit position is petitioner fail to order a transcript of the trial as was his duty. It it petitioner position he order a transcript of the trial an that transcript showed he did not have a fair opportunity to present facts and witness at trial.See Federal Rule Appellate Procedure 10. Futher The Seventh Circuit was goverened by clearly erroneous test F. R. C. Pro. 52 (a).Filing a claim of employment discrimination is protedted activity under Title VII,42 U.S.C 2000e-3 reguardless whether the complaining party prevails in the underlying charge of discrimination. Berg. v. La crosse Cooler Co. 612,F2d 1041, 1043 (7th Cir. 1980). As such Petitioner,s request his Petition for Writ Of Certiorari be granted.And Writ Of Error.

Submitted By:

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PROOF OF SERVICE

The undersigned hereby certifies that copies of petition for writ of Certiorari to the Court of Appeals For The Seventh Circuit was sent to counsel on record for respondent by encloseing copys thereof in an envelop. Mail First Class postage prepaid, address to:

Sue M. Douglas
BUCKINGHAM ,DOOTTLE & BURROUGHS
50 South Main Street
P.O. Box 1500
Akron, Ohio 44309

On this 24 day of September 1990

Ira Banks